HUMAN RIGHTS WATCH

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HUMAN RIGHTS IN POST-INVASION PANAMA:

JUSTICE DELAYED IS JUSTICE DENIED

The ouster of General Manuel Noriega in December 1989 and the installation of the democratically-elected coalition government of President Guillermo Endara brought high hopes in Panama that a long period of disrespect for law and the civil rights of the Panamanian people had come to an end. Today, more than a year later, those hopes have been displaced by widespread belief that the government has performed miserably in addressing the country's most pressing human rights problems, and is incapable of administering its judicial system either fairly or efficiently. Indeed, despite continuing material hardship and the absence of any significant improvement in the economic fortunes of most Panamanians, opinion polls attribute the government's precipitous fall in popularity over the past year most of all to the public's perception that its government has failed to provide one commodity as essential as any other: justice.

The worst mark against the Endara government -- although not necessarily the one that most harms its public standing in Panama -- has been its failure to make meaningful progress in addressing the systemic problems inherited from the Noriega regime: serious prison overcrowding, prolonged detentions without trial, non-existent or inadequate legal representation, and inefficient and politicized courts. To these problems the government has added new ones not uncommon in societies undergoing transition from authoritarian to democratic rule: the selective application of its penal law against those suspected of past human rights abuses, the failure to develop clear criteria and priorities for the prosecution of past offenses, and a sensitivity to public pressure in individual cases which, far from inspiring public confidence in the administration of justice, does much to undermine it.

These failings, critical though they are, should not obscure genuine improvements in Panama's human rights situation since the return of civilian rule. The State is not systematically engaged in acts of physical violence against its citizens; criminal law no longer is employed routinely to suppress politicaldissent; freedom of expression, while not absolute, is exercised and respected; and courts and prosecutors, though still subject to political direction and influence, operate far more independently than they did under the Noriega regime. Government officials, moreover, openly acknowledge many of the human rights problems they face. Their recognition of the need for reform, however, has not been matched by actual improvements in the country's legal and penal institutions. The abiding fact is that the wheels of justice still turn so slowly in Panama that, for most people caught up in them, they might as well not turn at all.

Prolonged Pre-Trial Detentions

In Over-Crowded and Violent Prisons

Panamanian human rights monitors and government officials agree on the essential figures. The prisons of Panama, built to accommodate a maximum of 1,600 prisoners, today hold approximately 3,700; over 1,000 of those are housed at the Modelo prison in Panama City, which was designed to hold no more than 250. To these numbers they add one even more shocking: over 90% of the prisoners in jail have not been tried on the charges brought against them. Of these pre-trial detainees, a substantial majority have been incarcerated over a year, and detention without trial for up to five years is not uncommon. In many cases, moreover, prisoners have been held for months, even years, before the investigation to determine whether there exists sufficient evidence for the charges against them to go to trial has been completed. In short, hundreds if not thousands of Panamanians who have not been tried, who may never be tried and

who, if tried, may never be convicted1 are nevertheless incarcerated, usually well in excess of a year, in seriously overcrowded prisons. In many cases, the time they have spent in jail already exceeds the time they would have spent had they been tried and convicted.

To make matters worse, primarily because of the overcrowding, prison conditions in Panama are widely described as subhuman -- a senior government minister calls them "Dantesque." One monitor who in February of this year concluded an inspection of Panama's prisons on behalf of an international humanitarian organization confirms that, although there has been no torture or significant governmental abuse of prisoners since Noriega's ouster, conditions in the jails are extraordinarily violent. In the Modelo jail in the capital, there have been six murders in the past four months alone, all the result of prisoner against prisoner attacks. Photographs of one corpse showed innumerable slash-marks on the victim's face and body, and there are widespread reports that prison officials make little effort to contain the violence, allow gangs to form and fight over turf and, in at least one jail, have knowingly permitted inmates to arm themselves with crude weapons made from dangerous materials, such as rolled barbed wire, left within common reach of the prison population. In most penitentiaries, furthermore, medical facilities are either non-existent or rudimentary; only Modelo has a full-scale infirmary; and there are no measures available anywhere to deal with the growing number of inmates infected with AIDS. Photographs and visitors' reports also indicate that sanitation in the jails is poor, disease rampant and nutrition suspect.

The fact that so many inmates who have never been tried are exposed to these conditions for so long is the result primarily of two causes, the first of which stems from the Panamanian penal code itself.Traditionally, under Panamanian law, once an allegation of criminal conduct (*denuncia*) had been made against an individual, and the prosecutor's office had decided to open an investigatory file (*sumario*), pre-trial "preventive" detention could be obtained -- indeed, was virtually automatic at the prosecutor's request -- in every case in which the alleged crime was punishable by a prison term of any duration. In theory, the *sumario* investigatory phase should last no longer than three months, but in practice it almost always lasts much longer, and the excess duration provides no ground for the prisoner to be released from detention. Although the circumstances in which preventive detention may be ordered have been narrowed by the recent passage of Law No. 3 (discussed below), and although bail is a theoretical possibility in certain cases (but not a practical reality for most prisoners), the provisions of Panamanian law thus ensure that suspects can and will be jailed for substantial periods of time prior to any final determination by the prosecution that the evidence is sufficient to warrant trial.

The second factor leading to the inordinate length of preventive detentions is that the courts, and to a lesser extent the Attorney General's office, are in a state of administrative collapse. In the two years prior to Noriega's ouster at the end of 1989, we were told, the courts in Panama held virtually no criminal trials. To the backlog thereby created have been added thousands of new cases; freed from their fears of intimidation or their sense of futility, Panamanian citizens lodged, by most counts, some 17,000 criminal *denuncias* in the first nine months of 1990 alone. The Attorney General's office is ill-equipped to deal with the sudden upsurge. Since the invasion, many prosecutors considered incompetent or politically unsuitable have been dismissed, others reassigned, and the office continues to be beset by internal divisions. In late February, the Attorney General asked for the resignation of each of his senior prosecutors, and declined to reappoint many of them. Although most independent observers estimate the delay to be much longer, government officials themselves concede that the average length of the *sumario* process currently exceeds six months. The completion of the *sumario* and (where the evidence warrants) the calling of a trial will not end the defendant's wait, however. Because so few trials were held in Panama in 1988 and 1989, the courts were in disarray for the first few months following the December 1989 invasion, and even now appear to be functioning with no special urgency, months may pass between the conclusion of the *sumario* and the actual conduct of any trial. Thus, in the overwhelming number of cases, pre-trial detentions, already too long, continue.

The sheer number of old and newer cases awaiting trial is by no means the only problem facing the Panamanian

judiciary. From top to bottom, judges who held posts under Noriega resigned or were purged and have been replaced by new ones, almost all of whom lack prior judicial experience: all nine of the Supreme Court's judges resigned and were replaced; the newly-constituted Supreme Court then dismissed or had to replace 13 out of the 19 judges of the *Tribunales Superiores*, the intermediate appellate courts; and approximately two-thirds of the 48 trial-level circuit judges, were, in turn, removed or replaced by the newly appointed appellate judges.2 During the invasion, moreover, the Supreme Court's offices and courtrooms were thoroughly gutted by Noriega loyalists, and the courts in the city of Colon were destroyed in the United States attack on police headquarters, located in the same building. In trial-level and appellate courts throughout the country, files that might prove embarrassing (or worse)to members of the prior regime were ransacked. To a country that already had suffered for years from corrupt and inefficient judges, and that had never developed modern case management techniques, the December 1989 invasion brought new disruptions from which the judicial system is only now beginning to recuperate.

In this environment, a pre-trial detainee who exercises his right of *habeas corpus* or other challenges to detention afforded by Panamanian law is unlikely to have his petition heard promptly, if at all. Most prisoners, however, lack the legal representation needed to assert such rights. Only a small fraction of Panamanian lawyers in private practice handle criminal cases, and their fees are beyond the means of most prisoners to pay. The State is required to provide free legal assistance for those who require it, but there are today less than 20 public defenders (the law contemplates at least 36), and their average individual case-load exceeds 450 per year.

Government officials, judges and legislators all readily admit that the problems confronting Panama's prison population and its judicial system are of crisis proportions. Human rights activists and the government disagree, however, over whether the ameliorative measures adopted or planned by the government even begin to provide an adequate response to the crisis.

The budget devoted to the administration of prisons in Panama rose in 1990 to $1,958,000 a modest $383,350 increase over the amount budgeted by the Noriega government in 1989. For 1991, the Ministry of Government and Justice, under whose jurisdiction the prisons fall, sought prison funding of approximately $9 million; according to Minister and Vice President Ricardo Arias Calderon, the government intended to devote $6 million of that amount to the purchase of a military training site and its conversion into a prison farm that would hold up to 1,000 inmates (it would be the first new prison in Panama in over 40 years), and the study of a second facility. In the end, however, the total 1991 prison budget was limited to $2.78 million, and less than $500,000 of that is available to fund the acquisition of land necessary for the new prison site. The gap between the requested and budgeted amounts appears to reflect, not only Panama's straightened economic condition, but differing priorities among the often-jousting members of its coalition government.

Funding for the judicial system and the Attorney General's office also has not risen appreciably since 1989. In the face of the enormous administrative challenges facing the judicial system, the only new appropriations cited by government officials were those necessary to fund four new trial-level courts for the hearing of criminal cases and, beginning this March, to pay the salaries of 15 additional public defenders (the total will still be less than the number required by law).

Focusing specifically on the problem of prolonged detentions, the government claims to have identified 150 prisoners who have been held without trial the longest, but cannot say what number, if any, of those prisoners have been tried or released. The most widely-discussed effort at reform in this area, however, was the passage in January of this year of Law No. 3. This statute aims to reduce the number of pre-trial detainees by providing a series of preferred alternatives to pre-trial incarceration -- such as house arrest and restrictions on travel -- and by restricting the circumstances in which preventive detention is supposed to be available. The most significant such restriction in the new law is to limit preventive detention to those cases in which the charges, if proven, would carry a prison term of at least two years. Although Law No. 3 was designed to apply both prospectively and to defendants already in custody -- thus easing prison overcrowding and correcting some of the worst injustices of the old system -- it appears to have been invoked

thus far only by a small number of former officials of the Noriegaregime. As a result, the new law has generated enormous public controversy, but has not had any appreciable impact as yet on the conditions that led to its creation.

Prosecution of the Crimes of the Noriega Government

However unsatisfactory the government's response has been to the administrative problems that affect the rights of most Panamanian defendants, it is its handling of former officials of the Noriega regime suspected of crime that currently receives the most public attention and gives rise to the strongest criticisms in Panama. Editorials in the leading newspapers, reflecting the views of the majority of Panamanian citizens interviewed by Americas Watch, attack the government for failing to indict greater numbers of ex-military commanders, judges, prosecutors and other Noriega officials, for failing to pursue aggressively those cases in which indictments have been issued, and for giving preferential treatment to those former officials that have been detained. Lawyers for the former officials that have been prosecuted, as well as a few radio stations, on the other hand, vigorously assert that the ex-Noriega officials in jail are political prisoners, that the government is prosecuting them for what are at best political offenses, and that they are systematically being denied due process of law.

Although our investigation did not furnish sufficient evidence to draw a definitive conclusion regarding the merits of the charges made by either camp, it did suggest that the government has done much less than it could to hold accountable those who committed human rights abuses under the prior regime, and that, while political considerations have almost certainly influenced the course of a number of prosecutions, claims of widespread political persecution of former Noriega officials are vastly overstated. What is most apparent, however, is that the government's failure to articulate and act upon a coherent policy for the prosecution of past abuses, coupled with inconsistent and unclear pronouncements from the courts, have given credence to the charges made by both sides in this dispute and have undermined public confidence in the ability of Panama's legal institutions to render a fair and adequate judgment of the crimes committed by the Noriega regime.

Given the widespread abuses that took place during the years Noriega was in power, in particular the years 1986-89, and in light of the thousands of *denuncias* that have been made against military and other officials since the invasion, the number of former officials currently facing criminal charges appears to be rather low. Precise numbers were difficult to obtain, but the most reliable estimates placed at about 48 the number of former government officials, mostly military men, that are now in prison facing a variety of charges, including murder, torture, human rights offenses, obstruction of justice and, in a small number of cases, theft of public funds. Of these 48 in jail, 32 (30 military officials and 2 civilians) are believed to have been captured by U.S. troops during the invasion, and 16 subsequently to have been detained by Panamanian authorities, mostly during the first half of 1990. In January 1990, the U.S. Southern Command turned over to Panamanian authorities far more detainees -- no one can say how many, but the number is at least 70 and probably less than 150 -- and only a small number of the ones released -- again, no government official or prosecutor could say how many, but 20 is probably the maximum -- are still under indictment or continuing investigation. In addition to these cases, the Attorney General's office claims to be pursuing a handful of other investigations into offenses that may have been committed by former officials, but no additional arrests have been made or indictments issued.

The probabilities, therefore, are that (barring a major change in prosecutorial policy or personnel) the total number of former Noriega officials who will be summoned for trial upon the completion of investigations will not exceed 70, and may well be substantially lower. How soon these cases will get totrial is also unclear. None of the most prominent cases of abuse -- including the disappearance of activist priest Hector Gallego in 1971 and the torture and murder of Dr. Hugo Spadafora in 1985 -- has been called to trial, although the Attorney General's office claims that the Gallego case will be ready for hearing within a few months and the Spadafora case before the end of this year. Indeed, fourteen months after the invasion, only one former military man, Camilo Perez, has yet been tried. (Perez, who was not an

officer and who was charged with the murder of a security guard in a shoot-out without any evident political motive, was convicted late last month after a several-day trial.) In defending this record, Attorney General Rogelio Cruz told Americas Watch that it would be unfair to the rest of Panama's prison population awaiting trial to give priority to trying former officials accused of human rights abuses. The seeming even-handedness of this explanation is commendable, but the government's failure to try swiftly any appreciable number of defendants even in cases of common crime, together with its apparent susceptibility to political pressures in other contexts, leads many to suspect that the government simply is not eager to pursue aggressively cases of past official abuse.3

The situation of those former officials who are in detention, their own lawyers concede, is considerably better than that of the rest of the Panamanian prior population. For reasons of their own personal safety, and not necessarily as a result of official favoritism, they are generally isolated from the rest of the inmates in the facilities where they are being held; a substantial number of them are detained at El Renacer, considered the "best" of Panama's prisons for men; their families are permitted regular visits, and are allowed to bring them care packages; and, by and large, they appear to be able to afford able legal representation and to meet with their lawyers on a regular basis. Recent visits by independent monitors indicate, and their own lawyers confirm, that the incarcerated leaders of the Noriega government and military are not being mistreated by their jailers.

The relatively low number of former officials being prosecuted, the failure as yet to bring them to trial, and the perception that they are more favorably treated than others have created public anger and frustration to which government authorities and the judiciary have responded in an *ad hoc* and confusing manner. The Attorney General's office has developed no criteria regarding the degree of criminal culpability at different levels in the chain of command, has failed to establish any discernible guidelines concerning which cases deserve more immediate attention, and has declined to form any specialized prosecutorial units for the handling of these cases. Instead, as criticisms of his performance have mounted, Attorney General Rogelio Cruz decided late last month, without public explanation, to ask for the resignation of his entire senior staff (a move resisted by two or three prosecutors) and, as of this moment, his office appears to be in greater disarray than ever.

In one of its first important tests, meanwhile, the judiciary has acted in a manner which only reinforces the view that political considerations, and not the neutral application of legal principles, are what govern the cases of former Noriega officials. On February 14 of last year, former Attorney General Carlos Villalaz was arrested and imprisoned on charges that he participated in the cover-up of the murderof Major Moisés Giroldi, a participant in the attempted coup against Noriega staged by a few military officers in October 1989. Since his initial detention, charges were brought against Villalaz in two other cases, one involving the destruction of bank files in the course of a U.S. Drug Enforcement Agency investigation (the "Pisces" case), and another in which he is said to have provided a no-show job to Noriega's sister. On February 20 of this year, Villalaz's attorneys succeeded in persuading a local court that, because the maximum sentence in the Giroldi cover-up case was less than 2 years -- and since, for like reasons, prosecutors in the other two cases had already determined that preventive detention under Law No. 3 was unavailable -- their client should be released from jail and placed instead under house arrest. Villalaz was released to his home that day, but only two days later, after an enormous public outcry, the decision was reversed by the *Tribunal Superior* and Villalaz was remanded immediately to jail. The ostensible ground for reversal was that the lower court judge had failed to notify the complaining party, the lawyer for the Giroldi family, of the Court's intention to release the defendant. Respected lawyers interviewed by Americas Watch, however -- including one Supreme Court judge, and a senior government official who helped draft Law No. 3 -- gave entirely different, and inconsistent, reasons for the reversal: some said the judge who granted Villalaz house arrest should have added to the potential prison term in the Giroldi case the minimum terms in the other two cases (an interpretation at odds with the wording of Law No. 3), while others stated that the risk of Villalaz's flight warranted his continuing incarceration. The failure of the *Tribunal Superior* to speak clearly in this precedent-setting case is unfortunate enough, but was made worse still by an additional measure it took upon reversing the lower court's decisions. Reacting to the public outcry over Villalaz's release (even though he still remained for those

two days under house arrest), and apparently urged on by the Supreme Court, the *Tribunal Superior* fired the lower court judge, effective immediately. In its desire to defend Law No. 3 against attack from those who view it as a loophole through which former Noriega officials might escape justice, the judiciary's response in this case thus has called into question its own respect for the principle of judicial independence, and has given fuel to charges by former Noriega officials that they will not be treated fairly by the courts.

A second set of cases that has tested public confidence in the current government's handling of past human rights abuses involves its treatment of suspects who have taken refuge in the embassies of various foreign governments and who claim that, because the charges against them are "political," they should be permitted to emigrate. During Americas Watch's visit to Panama, for example, public attention was focused on the government's recent decision to give safe passage out of the country to Rodolfo ("Popito") Chiari de León, a former Minister of Government and Justice, who had been ensconced in the Ecuadorian embassy for over 11 months. The principal charge against Chiari was that he had ordered the shut-down of various newspapers and radio stations. After reviewing the file, the Ecuadorian government informed Panama that, in its judgment, the charges pending against Chiari were indeed "political offenses." Although that determination triggered an unconditional obligation upon Panama to permit Chiari's exile under Article 12 of the Caracas Convention (an inter-American treaty on diplomatic asylum to which Panama is a signatory), Panama refused his release for many months. Late last month, however -- following what President Endara called a "patient" review of the file and what others claim was pressure exerted by Ecuador -- the Panamanian authorities declared that they, too, considered the charges to be political offenses and permitted Chiari's release. While we are not in a position to assess the merits of that determination, it is clear that Panama's delay and reversal in position, together with its own announcement that Chiari's alleged crimes were political offenses (as opposed to simply accepting Ecuador's determination), did little to instill confidence in Panama's legal processes either at home or abroad.

With the departure of Chiari, six former officials remain in residence at various embassies and are seeking safe passage out of Panama. In the following four cases, the embassy government has declared the offense to be political, but the Panamanian government disagrees and continues to resist their departure: Heráclides Sucre, accused of murder in the Giroldi case, and Gonzalo González, implicated in another murder in the City of Balboa, are in the Peruvian embassy; Luis Gómez, a former legislator implicated in at least two murders, took refuge in the Cuban embassy shortly after the invasion; and Rafael Arosemena, in the embassy of Mexico, is accused of theft of public funds. Two other former military officers -- Jorge Eliecer Bernal and Mario Ramos Ocana -- took refuge in the Guatemalan embassy in December 1990 shortly after United States troops put down an insurrection (some say coup attempt) led by Eduardo Herrera Hassan and in which the two appear to have actively participated.

The Jorge Bernal case, in particular, illustrates some of the real hurdles facing the government in seeking justice for past human rights offenses, as well as the legal irregularities it may be prone to commit in trying to overcome those obstacles. Bernal, a captain who once headed Noriega's much-feared "Doberman" police unit, was not under active investigation when he took refuge in the Guatemalan embassy and, if his only offense were participating in the December 4 military uprising, he would plainly appear to be entitled to leave the country. When the Guatemalan embassy asked to review the evidence against him, however, the Panamanian government, rather than submit his file to the embassy, quickly reopened the investigation into Bernal's alleged involvement in the killing of Yito Barrantes, a young worker who was shot by a uniformed policeman during a labor demonstration in March 1986. Bernal was twice before investigated in the same case -- once when Noriega was in power, and again in 1990 -- and both times the investigation was "provisionally" closed when no evidence conclusively linking him to Barrantes' death could be found. Bernal's family claims, and one government official privately acknowledged, that no new evidence has surfaced to warrant the reopening of that investigation. The government's reluctance to let him go, however, may be due to its belief that he was responsible for the murder of Manuel Vasquez, who was killed in February 1987 after participating in a coup attempt against Noriega. After the witnesses in that case retracted their accusations against Bernal, the investigation of him was closed -- not provisionally, but finally -- some time in 1987 or 1988. Although the authorities

believe that the witnesses' retractions were coerced, under Panamanian law, Bernal was in effect conclusively cleared in the Vasquez case unless it can be established that the investigation in that case was tainted by perjury or fraud, and this the government has not attempted to show. Thus, rather than confront head-on the legal obstacles posed by what was possibly a cover-up in the Vasquez case -- for example, by amending the requirements for re-opening an investigation -- the government instead appears to be keeping open the Barrantes case without foundation in order to deny Bernal safe conduct out of the country.

Freedom of Expression, the Right to Assembly, and

the Right to Privacy

Under the Noriega regime, and in particular during its last three years, freedom of expression was severely curtailed in Panama. Several leading newspapers, including *La Prensa*, a widely-respected daily, were closed outright, and most other news outlets sharply limited any reporting critical of the government for fear of legal and physical reprisal. With a few exceptions, public demonstrations of protest were harshly repressed, and organizers of opposition movements faced the constant threat of incarceration or government-approved violence directed against them.

The situation today appears vastly improved. *La Prensa* and two other newspapers previously shut down have reopened; press criticism of government officials and their policies is robust and widespread; protest demonstrations are common and, for the most part, undisturbed; and, with the possible exception of labor organizing, political activity throughout the spectrum is generally free from threat of retaliation.

The government, however, has not abandoned all control over the media. It has rejected calls to abolish those laws that still provide for criminal sanctions in libel cases; one reporter was briefly jailed for criticizing the government; and President Endara himself initiated proceedings that could result in criminal penalties against a reporter who ridiculed him. In addition, the government has proposed a new law regulating the press; its provisions include a restriction on the practice of journalism to Panamanian citizens with a university degree in journalism or communications. The government's claim to have abandoned the practice of censorship, moreover, was seriously put into question when, in September 1990, it canceled the operating licenses of four radio stations whose owners were linked to the Noriega regime. The government claims that the cancellations were warranted by certain technical violations, but the same asserted violations have been ignored routinely in other cases involving stations less critical of official policies.

Exercise of the right of assembly, though generally respected, can still have its costs in Panama. According to several witnesses, a peaceful student-led demonstration in August 1990 was fired upon by police using birdshot. A general strike called by organized labor for December 4 and 5 of last year encountered fierce resistance by the government, which appears determined to restrict the rights of workers under Panamanian law in its claimed effort to revitalize the economy. The government, linking the labor protest to the December 4 take-over of a police headquarters led by Herrera Hassan (who had just escaped from jail), rapidly pushed through a new law (Law No. 25) declaring the strike an illegal threat to public order, and proceeded over the next several days to dismiss nearly 1,000 public employees, including virtually the entire labor leadership that organized the strike. To date, the Supreme Court has declined to rule on a constitutional challenge to Law No. 25 filed by the unions in December.

In sum, the space for public dissent has widened appreciably since Noriega was ousted, but the government, which has retained and in some instances added to the legal measures by which speech may be restricted, already has shown its willingness to resort to those measures when it sees its interests threatened.

In addition to freedom of expression, the Panamanian constitution guarantees citizens the rights to privacy and freedom from unauthorized intrusion into their homes, their correspondence and their communications. In at least one important

respect, however -- the privacy of telephone communications -- the government's policies do not match the constitutional guarantee. Recent reports in Panama indicated that General Noriega had operated a covert surveillance network, supposedly designed and financed by the United States C.I.A., enabling the government to monitor whatever phone calls it wished. In late 1990, a legislative committee announced that it would hold public hearings into allegations that President Endara had maintained the eavesdropping technology and that his office was continuing to monitor private calls. The President did not deny the allegations; instead, according to several sources, he argued privately to several legislators that the surveillance system was a legitimate national security necessity, and the legislature simply abandoned its plan to hold hearings into the matter. The government's apparent ability to monitor private calls, moreover, is not limited to this covert system. In an interview with Americas Watch, Attorney General Rogelio Cruz maintained that, notwithstanding the constitutional privacy guarantee, telephone taping was a legitimate investigatory technique, and that law enforcement officialscould and would employ it entirely in their own discretion, without prior judicial authorization or any subsequent review. Thus, although written correspondence may be safe from unauthorized official intrusion, electronic means of communication clearly are not.

APPENDIX

The Issue of Civilian Casualties Revisited

In January 1990, Americas Watch conducted a mission to Panama and later published a report on violations of the laws of war by both sides during the short-lived hostilities that followed the December 20, 1989 invasion by the United States.4 A version of that report, written by Kenneth Anderson and Juan E. Méndez, was published in a scholarly magazine.5 With respect to the United States forces, our report concluded that the tactics and weapons utilized resulted in an inordinate number of civilian victims, in violation of specific obligations under the Geneva Conventions. In the devastation created in the neighborhood of El Chorrillo, which lies next door to what used to be the general headquarters of the Panamanian Defense Force, American forces violated the rule of proportionality, which mandates that the risk of harm to impermissible targets be weighed against the military necessity of the objective pursued.

The attack on El Chorrillo, and a similar attack in an urban area of Colón, were conducted without prior warning to civilians, even though the outcome of the attack would not have been affected by such a warning. Under the Geneva Conventions, attacking forces are under a permanent duty to minimize harm to civilians. We concluded that the command of the invasion forces violated that rule.

We have urged an examination of the military operations in Panama to determine individual and collective responsibilities for these serious violations of the laws of war. No such inquiry has taken place, and none is contemplated, as far as we can tell. In mid-1990, the House Committee on the Armed Forces was preparing to hold hearings on the Panama invasion, which would have included an examination of this question, but the Committee's attention was diverted by the events in the Persian Gulf. Now that the war in the Middle East is over, it is our hope that Congress will again take up the Panama issue. The success of military efforts should not postpone a careful and reasoned examination of the way combat is conducted. Failure to conduct a self-critical analysis may foster repetition of violations of the laws of war, and promotes the perception that accountability for such violations is something only the vanquished, not the victors, need fear.

As we said in our May 1990 report, Americas Watch believes that the way Panamanian civilians died is at least as important as the issue of the number of those casualties. Unfortunately, insupportable claims about thousands of civilian casualties have obscured the debate about how they died. Since the publication of our report, that muddled controversy has not been clarified, in large measure because neither the Panamanian government nor the U.S. Department of Defense has provided a fair and accurate response to those claims. The government of Panama has callously ignored the need to identify carefully each of the corpses that were buried in haste in December 1989. After

many requests, the Office of the Prosecutorordered two exhumations. The first one took place in the Jardín de Paz cemetery in Panama City, on April 28, 1990, and 124 corpses were exhumed. The second one was conducted in Mount Hope cemetery in Colón on July 28, 1990, and it yielded fifteen unidentified corpses. These exhumations were done with bulldozers and in disregard for the need to preserve evidence. Some corpses were identified (presumably with the aid of records kept at the time of their burial; see our May 1990 report) and given to the families. The majority of the 139 bodies exhumed, however, remain unidentified.

In any event, the two exhumations were conducted solely for the purpose of finding remains and delivering them to relatives. Panamanian officials maintain that some of the bodies buried in the common graves were not actually victims of the invasion, but died in hospitals from other causes and were mixed together with invasion casualties by hospitals when their morgues exceeded their capacity. No attempt has been made to sort out this distinction and, most important, there has been no attempt (by autopsy or otherwise) to establish with any precision the cause of death for any of the bodies found in the common graves. The attempt to establish the cause of death in individual cases would likely have gone a long way to clarify the circumstances under which so many civilians died.

In addition, these two exhumations account for less than half of the minimum number of Panamanian deaths admitted by the Endara government. No further exhumations have been conducted since last July and, to our knowledge, none is contemplated even though the association of relatives of victims of the invasion has insisted on renewed efforts to account for them. By the Panamanian government's own count, issued on June 26, 1990, 47 remains are still unidentified, and there are 93 unresolved complaints about missing persons. There is no reasonable explanation why these outstanding humanitarian questions could not have merited greater attention in the fifteen months that have elapsed by since the invasion.

The U.S. Southern Command has also failed to honor fully its obligation to collect the dead, identify them and provide available information to their next of kin.6 Whatever the responsibility and role of the Panamanian authorities in this matter, the U.S. forces have an obligation to do that which emerges from their part, first as a belligerent and then as an occupying force in the conflict. American troops did take some part in the gathering and identification of corpses, but soon gave up that task. For the most part the matter was placed in the hands of the Medical-Legal Institute of the Panamanian government (*Instituto de Medicina Legal*, or IML), an agency that was ill-equipped to handle such a catastrophe to begin with, and that (like so many other Panamanian institutions) was further weakened by the invasion.

To this date, the Pentagon has refused to pay any attention to this matter, except to respond --inadequately -- to controversy generated by the press. Throughout 1990 there were many complaints in Panama and in the United States about the number and identity of the casualties, but the Pentagon remained largely oblivious to them. On September 30, 1990, "Sixty Minutes," a news and commentary program of CBS News, carried a segment titled "Victims of Just Cause." The program, anchored by Mike Wallace and produced by Charles C. Thompson II, charged that the Pentagon had deliberately covered up the number of civilian casualties in the invasion.7 It also gave credence to claims of much larger figuresthan those to which the Pentagon has admitted. In this respect, the most significant new detail contributed by Sixty Minutes was an internal Department of Defense document which stated: "The payment of individual combat-related claims under a program similar to the U.S.A. program in Grenada would not be in the best interest of the Department of Defense of the U.S. because of the potentially huge number of such claims."8

A flurry of articles and opinion pieces were published as a result of the Sixty Minutes segment.9 In November, the Pentagon finally saw fit to answer.10 In general terms, it stood by the figures given in January 1990, as amended by the IML later in the year. It acknowledged the authenticity of the internal document, but argued it had no significance to prove a higher number of casualties, since it was written by a property-claims officer who had no knowledge or information about Panamanian civilian casualties. In January 1991, a segment of "L.A. Law," a well-known television series, presented a fictionalized account of the invasion, based on published reports, dramatizing both the issue of

weapons and tactics used and the Army's lack of interest in clarifying the controversy about civilian casualties.11

During the many months that the Panamanian government claimed that it lacked the resources to address the need for a better accounting of the casualties, the United States government offered no tangible assistance for this purpose. Only in late February 1991, when the issue had all but died down and the relatives of the missing were no longer pressing for exhumations, did the American Embassy declare its willingness to contribute funds or equipment to the effort.12 The United States Embassy in Panama recently stated that the Bush Administration will make no further independent effort to investigate or count the number of casualties, and that it is content to rely instead on whatever figures are provided by the Panamanian government.13 Even if the internal Department of Defense document does not establish that the number of casualties is higher than admitted, it does highlight a separate but related problem: the unwillingness of the United States to compensate victims of the invasion. Some United States funds have been given to Panamanian families who were displaced from El Chorrillo, but more than a year later most of those families are still living in shelters because construction of replacement units is not yet complete.14 As for the dead and wounded, some American lawyers have filed claims for compensationon behalf of those Panamanian families, and have even tried to persuade Congress to institute a compensation program. To date, the Administration refuses to consider these claims.

Since the flurry of press report that we describe above, there have been some minor revisions of the casualty figures, even though the press attention has not resulted in serious new inquiries. Dr. Humberto Más, the Director of IML, said in mid-1990 that his official figures were that a total 373 Panamanian citizens had died in the invasion; he admitted that this is lower than all estimates, including the one offered by the Pentagon early on. In February of this year, he told Americas Watch that the total figure was 342 to 346; the reduction was based on information from hospitals as to the number of bodies buried in the mass graves who were not actual invasion casualties.15 (It is important to note, however, that Dr. Más believes that there are likely to be additional casualties that have not come to the attention of the authorities.) The IML has identified only 63 as military casualties, and an insurance company that covers former members of the Panamanian Defense Force has received only 68 claims.16 It would seem, therefore, that all others, including 47 unidentified and 93 "missing" during the invasion, are all civilians. These figures appear to indicate, therefore, that at least 280 to 305 civilians, and possibly more, died in Panama, which is very near our estimate of 300, and about 50 percent higher than the Pentagon originally claimed.17

The figures are necessarily "soft" because some of the common graves have not been exhumed; the delays in gathering the evidence resulted in the loss of important information; the evidence from the interior of the country, some of it anecdotal, has not been gathered adequately in the capital; and some families have not come forward to identify their dead. We have no basis to conclude, however, that the actual casualty figures could be much higher than those reported, as some groups in Panama and elsewhere have stated.18 The graves that have not been exhumed are thought to be much smaller than the ones dug up in April and in July, and claims that other common graves exist have not been supported by evidence. Similarly unsupported are reports that bodies were deliberately burned, thrown to the sea or shipped abroad. Even if all of these things had taken place, the number of bodies affected would have had to be relatively small, or they would not have avoided detection. At the same time, if hundreds or thousands of families were still without any information on the fate and whereabouts of their loved ones, by now there would be long lists of missing persons, gathered by official and non-governmental groups. To our knowledge, no such lists exist, except for the 93 cases that the IML has been unable to solve.19

Though we remain skeptical about larger numbers, we stress that the updated figures are still troublesome. They reveal that the "surgical operation" by American forces inflicted a toll in civilian lives that was at least four-and-a-half times higher than military causalities in the enemy, and twelve or thirteen times higher than the casualties suffered by U.S. troops. By themselves these ratios suggest that the rule of proportionality and the duty to minimize harm to civilians, where doing so would not compromise a legitimate military objective, were not faithfully observed by they invading U.S. forces. For us, the controversy over the number of civilian casualties should not obscure the important debate on

the manner in which those people died.

Now that the Persian Gulf war has ended, the American government appears bent once again on disregarding the fate of foreigners -- military and civilian -- who die in wars fought by the United States. There seems to be no interest in any examination of the bombing raids into Iraq to see if any of them violated the rules of warfare, and again the U.S. forces have refused to comply with their obligation to collect and count the enemy dead. Many years after the end of the Vietnam war, the United States rightfully continues to press for full accounting for each of the 2,300 Americans missing in action. No similar zeal is exercised in making available everything that can be known about those who have died as a result of American fire in more recent wars.20 In little over a year, the United States has been engaged in two wars, and in both of them it has refused to comply with important humanitarian obligations. It is a matter of great concern to us that military triumphalism appears to be inhibiting the American public from examining this troublesome trend. Americas Watch shall support efforts to induce the United States government to take seriously the duties incumbent upon any country when that country decides to wage war.

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1 Extremely low conviction rates are not unusual in Panama. According to one study, in 1986 (the last year for which data were available) courts in Panama City rendered approximately 10,900 judgments in criminal cases (most of which were based on the paper record without oral proceedings); in less than 2,000 of these were the defendants found guilty.

2 The government's replacement of judicial personnel has not been matched by any comparable effort at reform in

judicial procedure. Most significantly, although most of the locally-appointed *corregidores*, or magistrates, who run it have been replaced, the government has decided, at least for the moment, to leave intact the parallel administrative system which processes non-felony offenses. As before, most *corregidores* continue to lack legal training, and their decisions continue to be immune from ordinary appellate review. See Americas Watch's April 1988 report, "Human Rights in Panama," at 53-55.

3 The Endara government's decision to retain in the newly-constituted *Fuerza Publica* ("Public Force") approximately 12,000 of the 15,000 or so members of the former Panamanian Defense Forces reinforces the common public perception that the new government has not made a clean break with the policies and practices of the old. The government, for its part, claims that the *Fuerza Publica* is now under civilian control, that it has purged nearly all commanding officers of the old force, and that the increase in common crime throughout Panama since the invasion (which no one disputes) has made necessary the retention of large numbers of trained soldiers and policemen.

4 "The Laws of War and the Conduct of the Panama Invasion," An Americas Watch Report, May 1990.

5 Juan E. Méndez and Kenneth Anderson, "The Panama Invasion and the Laws of War," in Terrorism and Political Violence, Volume 2, Autumn 1990, Number 3, pp. 233-257.

6 Article 15, I Geneva Convention of 1949.

7 CBS News transcript, Volume XXIII, Number 3.

8 Ibid.

9 See, for example: "What's the Truth on Panama Casualties?," The Christian Science Monitor, October 16, 1991; "Estimates of Panamanian Casualties Not a Secret," The Christian Science Monitor (letters to the editor), November 16, 1991; Kenneth Freed, "Panama Tries to Bury Rumors of Mass Graves," The Los Angeles Times, October 27, 1991; "Casualties in Panama," (letters to the editor), The Los Angeles Times, November 12, 1990; Lee Hockstader, "In Panama, Civilian Deaths Remain an Issue," The Washington Post, October 6, 1990.

10 Cnl. Joseph S. Panvini, USAF, Southern Command and Michael P. W. Stone, Secretary of the Army, each wrote a letter to the editor of the Christian Science Monitor, November 16, 1990.

11 L.A. Law, "Rest in Pieces," Script #7L11, written by Patricia Green and John Robert Bensink (transcript).

12 Interview with Americas Watch, February 22, 1991.

13 Interview, cit.

14 During our most recent mission, displaced Chorrillo residents complained bitterly to Americas Watch about the inadequate temporary housing where they have lived for fifteen months, and expressed their dissatisfaction with the extremely small size of the replacement units under construction in El Chorrillo.

15 Karen Cheney, "How Many Died in Invasion? Nobody Knows," The Tico Times (San José, Costa Rica), August 10, 1990, p. 9; Americas Watch interview with Dr. Más, February 22, 1991. On January 11, 1990, the Southern Command had released the figures of 202 civilians and 314 "enemy" dead. By March, 1990, the second of these figures had been revised down to about 50. See Americas Watch, "The Laws of War and the Conduct of the Panama Invasion," May

1990, pp.12-13.

16 Lee Hockstader, "In Panama, Civilian Deaths Remain an Issue," The Washington Post, October 6, 1990.

17 "The Laws of War...," cit., p. 11, citing a similar estimate by Physicians for Human Rights.

18 See for example, statements by Olga Mejía, of the Comisión Nacional de Derechos Humanos de Panamá (CONADEHUPA) quoted in the article by Karen Cheney in The Tico Times, cit., and Comisión de Derechos Humanos de Centro América (CODEHUCA), "Exhumation Process in Panama. General Findings of CODEHUCA Delegation," August 6, 1990.

19 In January 1990, the Endara administration ordered the newly created Public Force to receive complaints and to create a record of missing persons. In another example of neglect and lack of interest, the list thus created was transferred from office to office and finally abandoned. Most families obtained the information they needed through the temporary delegation of theInternational Committee of the Red Cross, or by appealing to the services of non-governmental organizations. The PF office seems to have left 300 to 500 cases unaccounted for. Peter Eisner, "Debate Rages Over Invasion Toll, Newsday, December 12, 1990, page 13. It could be that the PF could not account for them because of sheer incompetence or neglect; if the list represented genuinely disappeared persons, those names would surely come up in other lists as well.

20 Holly Burkhalter, "Some Bodies Don't Count," The Los Angeles Times, March 12, 1991.